IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.2648 OF 2005

IN

SUIT NO.1240 OF 1989

Domnic Francis Pereira. ...Plaintiff

vs.

1.Joseph Paul Pereira and others. ...Defendants.

And

1.Mr.Sanjiv D.Gandhi & ors. ...Applicants.

Mr.Bhandary i/b. Bhandary & Bhandary, for Plaintiff.

Mr.Narayan Sahu i/b. S.K.Srivastava & Co., for Defendant no.3.

Mr.Snehal Shah i/b. Purnand & Co., for Defendant no.7.

Mr.Ashish Kamat i/b. Parikh & Co., for applicants in support.

CORAM: D.K.DESHMUKH,J.

DATED: 21st April,2007

P.C.:-

1. This is a notice of motion taken out by the persons who are not parties to the suit. It appears that the building has been constructed on a plot of land by the defendant no.7. This suit has been filed by one of the legal heirs of the original owner of the land. In this suit, an interim order has been passed on 27.9.1991 stating that the estate left behind by the original owner now consist of five flats in the building which is constructed by the builder defendant no.7, the Receiver of this court has been appointed as Receiver on those flats and the heirs of the original owner are appointed as agents of the Receiver to be in possession of the flats. The present applicants are the persons who are holding other flats in that building. By this notice of motion, they are seeking direction to the Court Receiver to attend the meeting which is convened by the Chief Promoter of the proposed co-operative housing society of the flat purchasers in that building. The learned Counsel appearing for plaintiff submits that it is necessary for the Receiver to attend the meeting so that the Receiver

can join in formation of the society because according to the learned Counsel in terms of the provisions of Section 6 of the Maharashtra Co-operative Societies Act, a Co-operative housing society has to consist of at least 10 persons. When it was pointed out to the learned Counsel, that even if the Receiver attends the meeting there will be only six persons to attend the meeting and the requirement is that there should be at least 10 persons, the learned Counsel could not give any intelligible reply. When it was put to the learned Counsel as to why it is necessary for the flat purchasers to form a co-operative society when according to the Maharashtra Co-operative societies Act considering their number they cannot form a co-operative society, and why they cannot form either association or society, again the learned Counsel cannot give any intelligible reply. In my opinion, as the Receiver is not the holder of the flats in the building, he cannot join in formation of the Co-operative Society. The Receiver is holding the property on behalf of the persons who may be held by the Court to be a true owners of the property. Directing the Court Receiver to participate in the process of formation of the co-operative Society, in

my opinion, will amount to setting up a bad precedent and involving the officer of the Court in unnecessary controversy. The notice of motion is therefore, disposed of.